

ORDINANCE NO. 13

Series 2010

AN ORDINANCE AMENDING CHAPTER 11 OF TITLE 5 OF THE BRECKENRIDGE TOWN CODE CONCERNING MOUNTAIN PINE BEETLES AND BEETLE INFESTED TREES

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. Section 5-11-3 of the Breckenridge Town Code is amended to read in its entirety as follows:

5-11-3: ANNUAL INSPECTION AND REMOVAL OF BEETLE INFESTED TREES

- A. Each landowner shall annually inspect the landowner's property to determine if trees on the property have become infested with mountain pine beetle.
- B. Not later than July 15th of each year each landowner shall cut down and remove all beetle infested trees from the landowner's property. Upon request made prior to July 15th of any year, and for good cause shown, the Director may extend the deadline for a specific parcel of real property by a maximum of one year.
- C. The Director may also extend the July 15th deadline on a Town-wide or area-wide basis if the Director determines that such an extension is required due to weather or other unanticipated conditions or circumstances that make compliance with the July 15th deadline unreasonable. The length of the extension shall be determined by the Director based upon all relevant facts. If the Director exercises his authority under this subsection C, notice of the extended deadline for the removal of all beetle infested trees shall be published on the Town's website.

Section 2. Section 5-11-7 of the Breckenridge Town Code is amended to read in its entirety as follows:

- A. If the Director determines that a landowner has not complied with the requirements of section 5-11-3, the Director shall notify the landowner. Such notice shall be given either by certified mail or personal delivery.
- B. The notice shall:
 - 1. advise the landowner that the Director believes that the landowner has not complied with the requirements of section 5-11-3;
 - 2. advise the landowner of Town-approved methods for the removal and destruction of beetle infested trees, and the list of Town-approved tree-removal contractors described in section 5-11-14; and
 - 3. advise the landowner that all trees infested with mountain pine beetle must be removed from the property by September 15th of the year in which the notice is given, or that an acceptable plan and schedule for removal of the beetle infested trees must be submitted to the Director by such date.
- C. If the landowner disputes that the property contains one or more trees infested with mountain pine beetle, the landowner shall notify the Director of such dispute within 10 days of receipt of the Director's notice. If a timely notice of dispute is given, the Town shall not file an application for an abatement order until the Director has met with the disputing party in an effort to resolve the dispute. If the Director meets with the disputing party and is unable to resolve the dispute, the Town may file an application for an abatement order pursuant to section 5-11-8, file a summons and complaint against the alleged violator in the Municipal Court, or take other appropriate action to enforce the provisions of this Chapter.

Section 3. Section 5-11-8 of the Breckenridge Town Code is amended to read in its entirety as follows:

5-11-8: ABATEMENT ORDER:

- A. In the event the landowner fails to comply with the Director's notice as described in Section 5-11-7, the Town has the authority to provide for and complete the removal

by obtaining and acting on an abatement order.

- B. Upon the expiration of the period of notice, or at any time thereafter if the required action has not taken place, the Town may apply to the municipal court for an abatement order.
- C. An application for an abatement order shall be accompanied by an affidavit affirming that:
 - 1. the Director has determined that the subject property has one or more trees infested with mountain pine beetle;
 - 2. the Director has complied with the notice requirements of Section 5-11-7;
 - 3. the landowner has not disputed the Director's determination that the subject property has one or more trees infested with mountain pine beetle; or that the owner has disputed the Director's determination and that the parties have met without being able to resolve the dispute; and
 - 4. the landowner has failed to either remove the beetle infested trees or to submit an acceptable plan and schedule for removal of the beetle infested trees within the required time.
- D. The Town shall give notice to the landowner of the property of its application for an abatement order either by certified mail or by personal service of the notice.
- E. The notice of application for an abatement order shall include a copy of the Town's application and its affidavit in support thereof, as well as the date, time, and place at which the Town will appear before the Municipal Court to request entry of the abatement order.
- F. At the stated time, date, and place, the municipal court judge shall review the Town's application for an abatement order, the affidavit, any statement of the Town offered in support thereof, as well as any statement and evidence presented by the owner or occupant, if present.
- G. If the municipal judge determines that:
 - 1. the subject property has one or more trees infested with mountain pine beetle;
 - 2. the Director has complied with the notice requirements of Section 5-11-7; and
 - 3. the landowner has failed to either remove the beetle infested trees or to submit an acceptable plan and schedule for removal of the beetle infested trees within the required time,the municipal court judge is authorized to enter an order permitting the Town to enter upon the property, remove the beetle infested trees, and recover its costs as provided in subsection J of this section.
- H. In case of an emergency involving imminent danger to public health, safety or welfare, the Town may authorize immediate removal of any beetle infested tree without notice or abatement order.
- I. The landowner shall be assessed twice the whole cost of removal of the beetle infested trees from the property, including administrative fees. If all of the costs and charges incurred by the Town are not paid within 30 days of the date of the assessment, the unpaid costs shall be certified to the Summit Treasurer for collection in the same manner as real property taxes.
- J. Proceedings brought by the Town pursuant to this section are civil in nature and are not the exclusive remedy for a violation of this Chapter. Nothing in this Section shall preclude the filing of a summons and complaint in the Municipal Court against a person alleged to have violated any provision of this Chapter.

Section 4. Section 5-11-9 of the Breckenridge Town Code is amended to read in its entirety as follows:

5-11-9: NO DEVELOPMENT PERMIT REQUIRED FOR REMOVAL OF BEETLE INFESTED TREE: No Development Permit shall be required to remove any beetle infested tree. However, prior to the landowner beginning removal of a

beetle infested tree the landowner shall have the property inspected by the Department of Community Development unless the landowner has contracted for the removal of the beetle infested tree with a Town-approved tree removal contractor. A Class D development permit is required for the removal of all trees other than beetle infested trees.

Section 5. Section 5-11-12 of the Breckenridge Town Code is amended to read in its entirety as follows:

5-11-12: TOWN PROPERTY:

A. Except for Town-owned open space parcels, the Town shall annually remove all beetle infested trees from Town-owned real property by July 15th. This deadline may be extended if budgetary constraints or site-specific constraints preclude compliance with the annual deadline. Any extension of the deadline shall be made by a nonemergency ordinance duly adopted by the Town Council.

B. Town-owned open space parcels shall be treated for mountain pine beetle based upon the recommendations of the "Mountain Pine Beetle Hazard Analysis for Town of Breckenridge Open Space Parcels" as amended from time to time, on file with the Department of Community Development.

Section 6. Chapter 11 of Title 5 of the Breckenridge Town Code is amended by the addition of a new Section 5-11-7, to be entitled "Violations and Penalties", which shall read in its entirety as follows:

5-11-17: VIOLATIONS AND PENALTIES: Except for civil proceedings brought by the Town pursuant to Section 5-11-8, it is unlawful and a misdemeanor offense for any person to violate any provision of this Chapter. Every person convicted of a violation of any misdemeanor provision of this Chapter shall be punished as provided in Section 1-4-1 of this Code. The Town's rights to enforce this Chapter are cumulative, and no action brought by the Town pursuant to Section 5-11-8 shall preclude the filing of a summons and complaint against a person alleged to have violated any provision of this Chapter or the commencement of other appropriate legal action to enforce the provisions of this Chapter.

Section 7. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 8. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

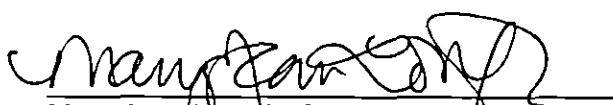
Section 9. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to the provisions of: (i) Section 31-15-103, C.R.S., (concerning municipal police power); (ii) Section 31-15-401, C.R.S. (concerning municipal police power); (iii) the powers contained in the Breckenridge Town Charter; and (iv) other powers possessed by home rule municipalities in Colorado.

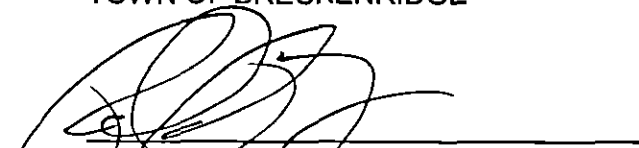
Section 10. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 23rd day of March, 2010. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 13th day of April, 2010, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE


Mary Jean Loufek, CMC, Town Clerk

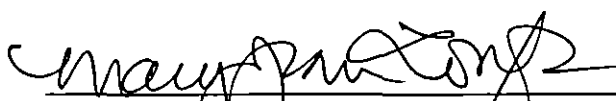

John S. Warner, Mayor

The public hearing on this ordinance was held on April 13, 2010.

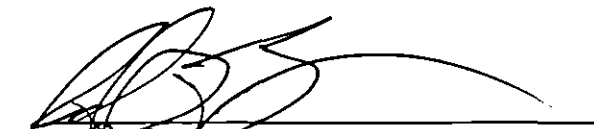
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE WITH AMENDMENTS AND PENALTY CLAUSE this 13th day of April, 2010. This ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

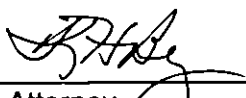


Mary Jean Loufek, CMC, Town Clerk



John G. Warner, Mayor

APPROVED IN FORM



Town Attorney

4/13/10
Date

This ordinance was published by title with amendments and penalty clause in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge on April 23, 2010.